

File No. 648

(Reprint of File No. 294)

Substitute House Bill No. 5709
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 30, 1998

AN ACT CONCERNING THE MENTAL RETARDATION WORKER
REGISTRY AND APPEALS BY PROVIDERS.

Be it enacted by the Senate and House of
Representatives in General Assembly convened:

1 Section 1. Section 156 of public act 97-2 of
2 the June 18 special session is repealed and the
3 following is substituted in lieu thereof:

4 As used in sections 157 to 161, inclusive, of
5 [this act] PUBLIC ACT 97-2 OF THE JUNE 18 SPECIAL
6 SESSION:

7 (1) "Abuse" means the wilful infliction by an
8 employee of physical pain or injury or the wilful
9 deprivation of services necessary to the physical
10 and mental health and safety of a department
11 client.

12 (2) "Authorized agency" means any agency
13 authorized in accordance with the general statutes
14 to conduct abuse and neglect investigations and
15 responsible for issuing or carrying out protective
16 services for persons with mental retardation.

17 (3) "Commissioner" means the Commissioner of
18 Mental Retardation.

19 (4) "Department" means the Department of
20 Mental Retardation.

21 (5) "Department client" means a person [with
22 mental retardation or a person] who IS ELIGIBLE
23 FOR, AND receives services or funding from, the
24 department.

25 (6) "Employee" means any individual employed
26 (A) by the department, or (B) by an agency,
27 organization or individual that is licensed or
28 funded by the department. [and that provides or
29 hires others to provide services, either directly
30 or indirectly, to a department client.]

31 (7) "Employer" means (A) the department, or
32 (B) an agency, organization or individual that is
33 licensed or funded by the department. [and that
34 provides or hires others to provide services to a
35 department client.]

36 (8) "Neglect" means the failure by an
37 employee, through action or inaction, to provide a
38 department client with the services necessary to
39 maintain his physical and mental health and
40 safety.

41 (9) "Protective services" has the meaning
42 assigned to it in section 46a-11a.

43 (10) "Registry" means a centralized data base
44 containing information regarding substantiated
45 abuse or neglect.

46 (11) "Substantiated abuse or neglect" means a
47 [final decision, pursuant to chapter 54 that]
48 DETERMINATION BY AN AUTHORIZED AGENCY, FOLLOWING
49 AN INVESTIGATION CONDUCTED OR MONITORED BY SUCH
50 AGENCY, THAT (A) abuse or neglect of a department
51 client has occurred, or (B) there has been a
52 criminal conviction of a felony or misdemeanor
53 involving abuse or neglect.

54 Sec. 2. Section 157 of public act 97-2 of the
55 June 18 special session is repealed and the
56 following is substituted in lieu thereof:

57 (a) The Department of Mental Retardation
58 shall establish and maintain a registry of
59 individuals who have been terminated or separated
60 from employment as a result of substantiated abuse
61 or neglect. The department shall, for the purposes
62 of maintaining the registry, be capable of
63 responding to inquiries, including response by
64 telephone voice mail or other automated response
65 for initial inquiries, as to whether an individual
66 has been terminated or separated from employment
67 as a result of substantiated abuse or neglect.

68 (b) The registry shall include, but not be
69 limited to, the following: (1) The names,
70 addresses and Social Security numbers of those
71 individuals terminated or separated from
72 employment as a result of substantiated abuse or
73 neglect; (2) the date of termination or
74 separation; (3) the type of abuse or neglect; and
75 (4) the name of any employer or authorized agency
76 requesting information from the registry, the
77 reason for the request and the date of the
78 request.

79 (c) The department shall make information in
80 the registry, other than limited information
81 available through an automated response to an
82 initial inquiry, available only to: (1) Authorized
83 agencies, for the purpose of protective service
84 determinations; or (2) employers [seeking to
85 employ a person] WHO EMPLOY INDIVIDUALS to provide
86 services to a department client.

87 (d) The department shall limit responses to
88 requests for identifying information from the
89 registry established under this section to (1)
90 identification of the individual terminated or
91 separated from employment for substantiated abuse
92 or neglect, and (2) the type of abuse or neglect
93 so substantiated.

94 (e) Not later than five business days
95 following [an employee's termination or separation
96 from employment for abuse or neglect] RECEIPT OF
97 WRITTEN NOTIFICATION BY AN AUTHORIZED AGENCY OF
98 THE SUBSTANTIATION OF ABUSE OR NEGLECT BY AN
99 EMPLOYEE WHO HAS BEEN TERMINATED OR SEPARATED FROM
100 EMPLOYMENT FOR SUCH ABUSE OR NEGLECT, an employer
101 shall submit to the department the name of such
102 employee and such other information as the
103 department may request. Upon receipt of
104 notification of such termination or separation,
105 the department shall [make an initial
106 determination as to whether to place an
107 individual's name on the registry. If an initial
108 determination warrants placing an individual's
109 name on the registry, the department shall give
110 the individual notice and an opportunity to be
111 heard and shall not place the individual's name on
112 the registry until it has substantiated the abuse
113 or neglect pursuant to chapter 54 governing
114 contested cases] CONDUCT A HEARING IN ACCORDANCE
115 WITH SECTIONS 4-177 TO 4-181a, INCLUSIVE, AS

116 AMENDED, GOVERNING CONTESTED CASES. THE DEPARTMENT
117 SHALL NOT PLACE AN INDIVIDUAL'S NAME ON THE
118 REGISTRY UNTIL THE DEPARTMENT HAS COMPLETED THE
119 HEARING AND THE HEARING HAS RESULTED IN A DECISION
120 TO PLACE THE INDIVIDUAL'S NAME ON THE REGISTRY.

121 (f) THE DEPARTMENT SHALL REMOVE AN EMPLOYEE'S
122 NAME FROM THE REGISTRY IF AN ARBITRATION OR A
123 LEGAL PROCEEDING RESULTS IN A FINDING THAT THE
124 EMPLOYEE WAS UNFAIRLY TERMINATED FROM EMPLOYMENT.

125 [(f)] (g) No employer shall be liable in any
126 civil action for damages brought by an employee or
127 an applicant for employment whose name appears on
128 the registry established by this section arising
129 out of the conduct of the employer in (1) making
130 any report in good faith pursuant to subsection
131 (e) of this section, (2) testifying under oath in
132 any administrative or judicial proceeding arising
133 from such report, (3) refusing to hire or to
134 retain any individual whose name appears on the
135 registry established under this section, or (4)
136 taking any other action to conform to the
137 requirements of this section. The immunity
138 provided in this subsection shall not apply to
139 gross negligence or to wilful or wanton
140 misconduct.

141 Sec. 3. Section 158 of public act 97-2 of the
142 June 18 special session is repealed and the
143 following is substituted in lieu thereof:

144 [(a)] No employer shall hire [or retain an
145 individual without first inquiring of the
146 department as to whether the individual's] AN
147 INDIVIDUAL WHOSE name appears on the registry and
148 no employer shall [hire or] retain an individual
149 [whose] AFTER RECEIVING NOTICE THAT AN
150 INDIVIDUAL'S name so appears.

151 [(b)] No person shall inquire of the department
152 as to whether an individual's name appears on the
153 registry except for the purposes authorized under
154 subsection (c) of section 157 of this act.]

155 Sec. 4. Section 160 of public act 97-2 of the
156 June 18 special session is repealed and the
157 following is substituted in lieu thereof:

158 The Department of Mental Retardation [may]
159 SHALL adopt regulations in accordance with the
160 provisions of chapter 54 to implement the
161 provisions of sections 156 to 160, inclusive, of
162 [this act] PUBLIC ACT 97-2 OF THE JUNE 18 SPECIAL
163 SESSION, AS AMENDED BY THIS ACT.

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5709

STATE IMPACT Minimal Cost, Within Anticipated
 Budgetary Resources, see
 explanation below

MUNICIPAL IMPACT None

STATE AGENCY(S) Department of Mental Retardation

EXPLANATION OF ESTIMATES:

This bill makes changes to section 156 through 160 of Public Act 97-2 of the June Special Session. PA 97-2 required the Department of Mental Retardation to establish and maintain a registry of individuals who have been terminated or separated from employment as a result of substantiated abuse or neglect. As a result of implementing the provisions of this bill regarding the worker registry, it is anticipated that there will be no additional costs incurred, as these changes will clarify administrative procedure.

The Department is required to adopt regulations concerning the worker registry. This will result in a minimal cost to the department that can be absorbed within anticipated resources.

House "A" makes technical changes to the worker registry as identified in the bill, resulting in no additional cost to the Department of Mental Retardation.

In addition, this amendment eliminates Section 5 and Section 6 of the original bill. This negates the indeterminate costs associated with the formal appeals process required in the bill. This eliminates the

avenue of re-course for persons or private agencies that are refused contracts by the Commissioner of the Department of Mental Retardation or if the provider does not meet the requirements.

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OLR AMENDED BILL ANALYSIS

SHB 5709 (as amended by House "A")*

AN ACT CONCERNING THE MENTAL RETARDATION WORKER REGISTRY AND APPEALS BY PROVIDERS

SUMMARY: The law requires the Department of Mental Retardation (DMR) to create and maintain a registry of individuals terminated or separated from employment because of substantiated abuse or neglect of a department client. This bill makes a number of changes to the DMR registry program by (1) limiting the definition of "department client" to those eligible for and receiving services from DMR; (2) specifying that "substantiated abuse and neglect" is a determination made after an investigation by an authorized agency; (3) amending the definition of "employee" and "employer"; (4) requiring DMR to conduct and complete a hearing under the Uniform Administrative Procedure Act's (UAPA) contested case provisions before it can place a person's name on the registry; (5) requiring removal of a person's name from the registry under certain conditions; and (6) clarifying the use of the registry in hiring or retaining individuals on it.

*House Amendment "A" (1) requires an employer to report to DMR within five days of receiving written notification from an authorized agency of the terminated employee's abuse or neglect; (2) eliminates language in the original bill making a decision by the DMR commissioner (a) not to contract with individuals or private agencies for support services for those with mental retardation and (b) that a nonprofit organization does not meet DMR funding requirements for employment programs and day services final decisions under the UAPA; and (3) makes a technical change concerning removing a name from the registry.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION**Definitional Changes**

The bill limits the definition of "department client" to those individuals who are eligible for and receive services or funding from DMR. Current law defines a department client as anyone with mental retardation or receiving DMR services or funding.

The bill redefines "substantiated abuse or neglect" to mean a determination by an authorized agency, following an investigation conducted or monitored by that agency, that (1) abuse or neglect of a client has occurred or (2) there has been a criminal conviction for a felony or misdemeanor involving abuse or neglect. Currently, substantiated abuse or neglect means a final decision made under the UAPA that abuse or neglect occurred or there was a criminal conviction involving abuse or neglect. By law, an "authorized agency" is one authorized under the general statutes to conduct abuse and neglect investigations and responsible for issuing or carrying out protective services orders for people with mental retardation.

The bill redefines "employee" to mean an individual employed by DMR or an agency, organization, or individual it licenses or funds. But it excludes those employed by agencies or individuals that provide or hire others to provide the services to DMR clients, whether directly or indirectly. It also changes the definition of "employer" to reflect that it no longer includes agencies or individuals hiring others to provide services.

Placing a Name on the Employee Registry

Under current law, an employer who terminates an employee because of patient abuse or neglect must submit the employee's name and other information DMR requests within five business days of the termination or separation. After receiving the notification, DMR must make an initial determination about placing the person's name on the registry. If placement is warranted, DMR must notify the employee and give him a hearing opportunity. It cannot place his name on the registry until the abuse or neglect is substantiated according to the UAPA's contested case provisions.

The bill instead requires the employer to submit the information to DMR within five days of receiving a written notification by an authorized agency of the substantiated abuse or neglect by an employee who has been terminated from employment for that abuse or neglect.

The bill also requires DMR, after receiving notice about an employee, to conduct a hearing under the UAPA's contested case provisions. It cannot place his name on the registry until the hearing is completed and results in a decision to put the name on the registry.

Removal of a Name From the Registry

The bill requires DMR to remove an employee's name from the registry if an arbitration or legal proceeding results in a finding that the employee was unfairly terminated.

Prohibition on Hiring

The bill prohibits DMR or any agency it licenses or funds from hiring a person whose name is on the registry or retaining a person after receiving notice that he is on it. Currently, the employer must first ask DMR whether the name is on the registry before hiring or retaining him. If so, hiring or retaining is prohibited.

BACKGROUND

Contested Case

A "contested case" under the UAPA is a proceeding in which the legal rights, duties, or privileges of a party are required by statute to be determined by an agency after an opportunity for hearing or in which a hearing is held.

Legislative History

The House referred the bill (File 294) to the Labor and Public Employees Committee on April 8. It reported the bill favorably without change on April 15. The House then referred the bill to the Judiciary Committee on April 17, which reported it favorably without change on April 22.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 23 Nay 0

Labor and Public Employees Committee

Joint Favorable Report
Yea 13 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 40 Nay 0